

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
September 16, 2005 Session

IN RE ADOPTION OF WILLIAM DREW MUIR

**Appeal from the Circuit Court for Marion County
No. 13722 Buddy D. Perry, Judge**

No. M2004-02652-COA-R3-CV - Filed November 16, 2005

WILLIAM B. CAIN, J., concurring.

I adhere to my longstanding view that a “preponderance of the evidence” standard and a “clear and convincing evidence” standard are incompatible with each other and cannot be reconciled either in the trial court or in appellate courts. The effort to make these standards compatible, as asserted in *Ray v. Ray*, 83 S.W.2d 726 (Tenn.Ct.App.2001), and its progeny are in my view incorrect for reasons stated at length in *Estate of Acuff v. O’Linger*, 56 S.W.3d 527 (Tenn.Ct.App.2001) and *In re Z.J.S. and M.J.P.*, No. M2002-02235-COA-R3-JV, filed June 3, 2003 (Tenn.Ct.App.2003-Cain, concurring).

Since clear and convincing evidence is lacking in this case to support termination of the parental rights of the father, I concur in the judgment.

WILLIAM B. CAIN, JUDGE